

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-DL-295
)	
Citadel Broadcasting Company)	NAL/Acct. No.200432500004
Licensee of KSYU in Kingfisher, Oklahoma)	
)	FRN 0001-5952-14
Las Vegas, Nevada)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 8, 2004

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Citadel Broadcasting Company (“Citadel”), licensee of radio station KSYU(FM), Kingfisher, Oklahoma, apparently liable for a forfeiture in the amount of nine thousand dollars (\$9,000) for willful and repeated violation of Sections 73.1125(a) and 73.3526(c)(1) of the Commission's Rules (“Rules”).¹ Specifically, we find Citadel Broadcasting Company apparently liable for failing to maintain a presence at the station’s main studio and failing to make available for inspection all of the required material in the station’s public inspection file.

II. BACKGROUND

2. On June 6, 2002, the FCC Enforcement Bureau’s Dallas Field Office (“Dallas Office”) received a complaint alleging radio station KLGH² failed to keep the public file up to date, failed to log EAS broadcasts, failed to originate EAS weekly tests, and failed to staff its main studio during normal business hours.

3. On the morning of February 20, 2003, an agent of the Dallas Office attempted an inspection of station KSYU’s main studio on Britton Road in Oklahoma City during regular business hours. The agent found no staff at the main studio.

4. On February 21, 2003, an agent of the Dallas Office inspected the public inspection file at KSYU’s main studio on Britton Road during regular business hours. The file was missing the last three quarterly programming and issues lists and the most recent ownership report. The transfer of ownership had been consummated approximately five months before the inspection. Managerial staff offices were located on NW 64th Street in Oklahoma City, over four miles away from the main studio and located

¹ 47 C.F.R. §§ 73.1125(a) & 73.3526(c)(1).

² KLGH subsequently changed call sign to WWLF-FM and then to KSYU.

outside of all authorized areas specified in Section 73.1125(a) for the location of a main studio. No management personnel worked at the Britton Road main studio.

5. On the morning of August 21, 2003, an agent from the Dallas Office attempted an inspection of the public inspection file at KSYU's main studio on Britton Road. There was no one at the main studio. Managerial staff traveled from their offices four miles away to provide access to the file. The public inspection file was missing completed Programming and Issues lists for the last five quarters. The file did contain documentation for a program, "Kingfisher Today" covering the period October 27, 2002 through May 11, 2003 which was not reduced to list form and was not maintained in quarterly segments of the year. The station's general manager stated that the station had considered applying for a waiver to move the main studio from the Britton Road location to their offices on NW 64th Street.

III. DISCUSSION

6. Section 73.1125(a) of the Rules states that each AM, FM, or TV broadcast station shall maintain a studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1). In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license.³ To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.⁴ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁵ In addition, there must be "managerial and staff presence" on a full-time basis during normal business hours to be considered "meaningful."⁶ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ...use the studio as a home base."⁷ On February 20, 2003 and August 21, 2003, the KSYU main studio was not staffed during normal business hours and management personnel offices were over four miles away at a location outside any of the areas permitted for the main studio by section 73.1125(a).

7. Section 73.3526(a)(2) of the Rules⁸ states that every permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. Additionally, every permittee or licensee of an AM, or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14)

³ See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁴ *Id.*

⁵ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁶ *Id.*, 6 FCC Rcd at 3616, n.2.

⁷ *Id.*, 7 FCC Rcd at 6802.

⁸ 47 C.F.R. § 73.3526(a)(2).

of this section. Section 73.3526(b) of the Rules⁹ requires the public inspection file be maintained at the station's main studio. Section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours. On February 21, 2003, an inspection of station KSYU's public inspection file revealed that required material was missing including the most recent ownership report and three quarterly Issues and Programs Lists. On August 21, 2003, an inspection of KSYU's public inspection file revealed that required material was missing including five quarterly issues and programs lists.

8. Based on the evidence before us, we find Citadel willfully¹⁰ and repeatedly¹¹ violated Sections 73.1125(a) and 73.3526(c)(1) of the Rules by failing to maintain a presence at the station's main studio and failing to make available for inspection all required material in the station's public inspection file.

9. Pursuant to Section 1.80(b)(4) of the Rules,¹² the base forfeiture amount for violation of the main studio rule is \$7,000, and the base forfeiture amount for violation of the public file rules is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Because the station maintained a portion of the required items in the public inspection file, a downward adjustment of the base forfeiture for that violation from \$10,000 to \$2,000 is warranted. Considering the entire record and applying the factors listed above, this case warrants a \$9,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁵ Citadel Broadcasting Company is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of nine thousand dollars (\$9,000) for willful and repeated violation of Sections 73.1125(a) and 73.3526(c)(1) of the Rules by failing to maintain a presence at the station's main studio and failing to make available for inspection all required material in the station's public inspection file.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Citadel Broadcasting Company SHALL PAY the full amount of the

⁹ 47 C.F.R. § 73.3526(b).

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹¹ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹² 47 C.F.R. § 1.80(b)(4).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Citadel Broadcasting Company, 7201 W. Lake Mead Boulevard, Suite 400, Las Vegas, Nevada 89128.

FEDERAL COMMUNICATIONS COMMISSION

¹⁶ See 47 C.F.R. § 1.1914.

James D. Wells
District Director, Dallas Office, Enforcement Bureau

Attachment